

INITIAL STATEMENT OF REASONS

SPECIFIC PURPOSE OF THE PROPOSED REPEAL

The Office of Administrative Law ("OAL") proposes to repeal sections 121-128 of title 1 of the California Code of Regulations (CCR) that implement, interpret, or make specific Government Code section 11340.5, subdivision (b). The purpose of repealing sections 121-128 is to end the process that OAL is required to follow for accepting determination requests and issuing a determination.

NECESSITY

Government Code section 11340.5, subdivision (b), authorizes OAL to issue a determination as to whether a state agency rule is a "regulation" as defined in Government Code section 11342.600 that is subject to the rulemaking requirements of the Administrative Procedure Act (APA; Gov. Code sec. 11340 et seq.). Since 1986, OAL has issued over 200 determinations pursuant to regulations adopted by OAL for processing determination requests and issuing determinations. These regulations are located at title 1, California Code of Regulations (CCR), sections 121 – 128. These regulations establish definitions, and set forth the filing requirements for determination requests, the procedures for publishing a notice, submitting a public comment and an agency response, and for issuing a determination.

While OAL has the authority to issue a determination pursuant to Government Code section 11340.5(b), the same statute makes the issuance of a determination a discretionary function of OAL. (Gov. Code sec. 11340.5(b) "the office *may* issue a determination." (Emphasis added.)) In contrast, the regulations proposed for repeal -- sections 121-128 -- implement Government Code section 11340.5(b) and establish the process that OAL is required to follow once it is notified, or learns on its own, of a state agency rule that has not complied with the rulemaking requirements of the APA. As a result of the upcoming 20% reduction in OAL's budget (and the 6% and 11% budget cuts already incurred in the prior and current fiscal years, respectively), OAL is no longer able to perform the discretionary function of issuing determinations, in addition to its statutorily mandated duties, with the resources available. Thus, OAL proposes to repeal title 1, CCR, sections 121-128, and Appendix A ("Request for Determination – Form 1013 (1/02)") -- the process that OAL is required to follow for accepting determination requests and issuing a determination.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS RELIED UPON

Except for the fiscal year 2003-2004 state budget proposed by the Governor, OAL did not rely upon any technical, theoretical, or empirical studies, reports or documents in proposing the repeal of these regulations.

REASONABLE ALTERNATIVES TO THE REPEAL OF THE REGULATIONS AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES

No other alternatives were presented to or considered by OAL. In light of the additional 20% reduction of its budget for Fiscal Year 2003-2004, on top of the reduction of its current and previous fiscal year budgets, OAL has determined that it must immediately suspend its discretionary function of accepting requests for determination and issuing determinations pursuant to Government Code section 11340.5, subdivision (b).

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

OAL has not identified any alternatives that would lessen any adverse impact on small business.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

In issuing a determination, OAL merely provides its legal opinion as to whether a state agency rule meets the definition of "regulation" under Government Code section 11342.600 that is subject to the rulemaking requirements of the APA. OAL's determinations are not binding. Furthermore, OAL does not have the authority to "enforce" its determinations. While the determinations themselves are entitled to deference, they are only advisory. OAL does not have the authority to determine the rights and responsibilities of anyone. Thus, if OAL was to determine that a particular state agency rule, policy or procedure met the definition of "regulation" that was subject to the APA, the requester would still need to pursue the matter in court and receive a ruling from the court that would be binding on the parties. Eliminating the availability of the determination process would not have a significant adverse economic impact on any business.